

ORIGINAL
FILED
07 JUN -6 PM 1:30
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL VON LOEWENFELDT (178665)
ADRIAN J. SAWYER (203712)
KERR & WAGSTAFFE LLP
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E-filing

Attorneys for Defendant
U.S. FOODSERVICE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

PIROOZ HAGHIGHI, an individual,

Plaintiff,

vs.

U.S. FOODSERVICE, INC.; and DOES 1-10,
inclusive.

Defendants.

Case No.

07 2946

NOTICE OF REMOVAL

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1332, 1441 and 1446, U.S.
4 FOODSERVICE, INC., ("U.S. Foodservice"), hereby removes to this Court the action described
5 herein. U.S Foodservice respectfully submits the following statement of grounds for removal:

6 1. On or about May 1, 2007, a complaint was filed in the Superior Court of the State
7 of California, County of Alameda, entitled *Pirooz Haghighi v. U.S. Foodservice, Inc., et al.*, (the
8 "Complaint"). A copy of the Summons and Complaint served on U.S. Foodservice are attached
9 hereto as Exhibit A.

10 2. On May 11, 2007, Plaintiff served the Complaint on U.S Foodservice.

11 3. The Complaint alleges two causes of action, one for breach of contract and one
12 for fraud.

13 4. This Court has diversity jurisdiction over this entire action under 28 U.S.C.
14 § 1332. First, there is complete diversity among the parties. U.S Foodservice is informed and
15 believes that Plaintiff, was at the time of filing of this action, and now is, a citizen of the State of
16 California. U.S Foodservice was, at the time of filing of this action, and now is, a corporation
17 organized and existing under the laws of Delaware with its principal place of business in
18 Maryland.

19 5. Second, this action satisfies the amount in controversy requirement of more than
20 \$75,000. The Complaint alleges that Plaintiff has suffered damages in an amount "in excess of
21 \$200,000." (Ex. A ¶ 9.) Accordingly, the amount in controversy here exceeds \$75,000,
22 exclusive of interests and costs.

23 6. For the reasons stated above, this case is one that may be removed to this Court
24 by Defendant pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446. This removal is effected
25 within thirty days after service on Defendant of the Complaint in the state court action, in
26 accordance with 28 U.S.C. § 1446(b).

27 WHEREFORE, U.S. FOODSERVICE hereby gives notice that this action has been
28 removed, in its entirety, from the Superior Court of the State of California, County of Alameda,

1 to the United States District Court for the Northern District of California, for further proceedings
2 as though it originally had been instituted herein.

3
4 DATED: June 6, 2007

KERR & WAGSTAFFE LLP

5
6 By



ADRIAN J. SAWYER
Attorneys for Defendant
U.S. FOODSERVICE, INC.

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

US FOODSERVICE, and DOES 1 THROUGH 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PIROOZ HAGHIGHI

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
FILED
ALAMEDA COUNTY

MAY 01 2007

By

By *L. Newt*

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

ALAMEDA COUNTY SUPERIOR COURT
1225 FALLON STREET, RM. 109
OAKLAND, CA 94612

CASE NUMBER:
(Número del caso)

2007323768

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
RICHARD M. ROGERS, #045843 415/397-1515

MAYO & ROGERS, 114 SANSOME STREET, #1310, SAN FRANCISCO, CA 94104

DATE: MAY 01 2007
(Fecha)

By *L. Newt*

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): US FOODSERVICE

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

RICHARD M. ROGERS, #045843
MAYO & ROGERS
114 Sansome Street, #1310
San Francisco, CA 94104
Telephone: 415/397-1515
Facsimile: 415/397-1540
Email: RogersRMR@aol.com

Attorneys for Plaintiff
PIROOZ HAGHIGHI

ENDORSED
FILED
ALAMEDA COUNTY

MAY 01 2007

Exec. Off./Clerk
By *W. New*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PIROOZ HAGHIGHI,
Plaintiff,

v.

US FOODSERVICE, and DOES 1
THROUGH 10, inclusive,
Defendants.

CASE NO. 2607323768

COMPLAINT FOR EQUITABLE
RELIEF AND DAMAGES

1. Breach of contract
2. Fraud

DEMAND FOR JURY TRIAL

Comes now Plaintiff PIROOZ HAGHIGHI, and alleges:

FIRST CAUSE OF ACTION

1. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants, DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and on such information and belief alleges, that each of the Defendants designated herein as a DOE is negligently or otherwise responsible in some manner for the events and happenings herein referred to, and caused injury and damages proximately thereby to the Plaintiff as herein alleged.

//

2. At all times herein mentioned, each of the Defendants was the servant, agent, co-conspirator and/or employee of each of the remaining Defendants and was acting within the scope and course of his agency and employment and/or pursuant to the conspiracy.

3. Plaintiff PIROOZ HAGHIGHI was employed by Defendant US FOODSERVICE pursuant to a written employment contract, an unsigned copy of which is attached hereto as Exhibit 1. Defendants have the signed original.

4. Defendant US Foodservice is a corporation authorized to do business in California.

5. Defendants represented to Plaintiff that he would be employed for a minimum period of two years.

6. Plaintiff was induced by Defendants to resign from his prior employment and join US Foodservice by promises of employment for at least two years.

7. Plaintiff performed his duties under the said employment contract.

8. Plaintiff's employment was terminated on September 19, 2006, in breach of the said employment contract.

9. As a direct consequence of Defendants' breach of the said contract, Plaintiff has suffered damages in excess of \$200,000.

SECOND CAUSE OF ACTION

10. Plaintiff incorporates the whole of his first cause of action by this reference.

11. Paul DeMarco, District Sales Manager for Defendants, told Plaintiff, during his recruitment of Plaintiff, that Plaintiff would be employed for at least two years.

12. The said representation of two years' employment was false.

13. Paul DeMarco knew the said representation was false when he made it.

14. Plaintiff relied on the said false representation to his detriment.

15. Defendants' intent was to obtain Plaintiff's customer contacts, then terminate Plaintiff.

16. As a result of Defendants' said conduct, Plaintiff has suffered emotional distress.

17. Defendants' said conduct was outrageous, despicable, malicious, oppressive, fraudulent and beyond the bounds tolerated by a civilized community, by reason of which Plaintiff

1 demands exemplary and punitive damages. Defendants, and each of them, intended to harm
2 Plaintiff.

3 WHEREFORE, Plaintiff prays for:

- 4 1. Actual damages in excess of \$200,000;
- 5 2. General damages in an amount within the jurisdiction of this Court;
- 6 3. Exemplary and punitive damages in an amount within the jurisdiction of this Court;
- 7 4. Costs of suit, prejudgment interest, and
- 8 5. Such further relief as the Court deems just and proper.

9 Respectfully submitted,

10 Dated: 4-27-07

MAYO & ROGERS

11
12 By: 

RICHARD M. ROGERS
Attorneys for Plaintiff

13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands trial by jury.

16 Dated: 4-27-07

MAYO & ROGERS

17
18 By: 

RICHARD M. ROGERS
Attorneys for Plaintiff

FROM :PIERE

FAX NO. :6503641700

Oct. 10 2006 12:25PM P2



March 21, 2006

Pirooz Haghighi
402 Ridge Road
San Carlos, CA 94070

Dear Pirooz:

I would like to offer you the position of Territory Manager with the anticipated start date of March 30, 2006. The assured compensation package is as follows:

- A base salary of \$1,350.00 per week (U.S. has 26 pay periods per year) for your first 26 weeks. The \$1,350.00 will consist of salary assistance, less any bad debt recoveries.
- Weeks 27 through 104 will be a combination of commission plus salary assistance, on a step up schedule. The starting point of your step up schedule will be calculated by taking 50% of your average weekly earned commissions, deducting that from your base salary of \$1,350.00 per week. This amount will be reduced by \$10.00 per week, until week 104. Earned commissions during this timeframe will be paid in addition to the salary assistance step up amount. Any bad debt recoveries, or commissions on transferred accounts will be deducted from your salary assistance.
- After week 104, you will be paid straight commissions.

Commissioned employees are paid on a one-week lag.

- 2 Weeks vacation per year until such time that your accrual rate reaches three weeks per year. Vacation for 2006 will be pro-rated based on your actual start date.
- 4 Floating Holidays and 6 Company Holidays per year, pro-rated based on your actual start date.
- Dedicated Vacation Relief Assistance
- Eligible to participate in Points of Focus program.
- You have the right to elect full commission at your discretion.

300 Lawrence Drive
Livermore, CA 94551
925.606.1919

EXHIBIT	/
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PROOF OF SERVICE

I, Garfield Pallister, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kerr & Wagstaffe LLP, 100 Spear Street, Suite 1800, San Francisco, California 94105.

On June 6, 2007, I served the following document(s):

NOTICE OF REMOVAL

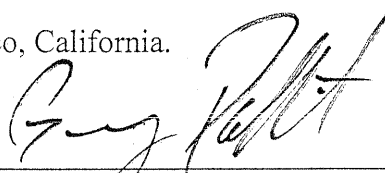
on the parties listed below as follows:

Richard M Rogers
Mayo & Rogers
114 Sansome Street, #1310
San Francisco, CA 94104

- ☒ **By first class mail** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.
- ☐ **By facsimile machine (FAX)** by personally transmitting a true copy thereof via an electronic facsimile machine.
- ☐ **By personal service** by causing to be personally delivered a true copy thereof to the address(es) listed herein at the location listed herein.
- ☐ **By Federal Express** or overnight courier.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 6, 2007, at San Francisco, California.



Garfield Pallister